

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DARRYL KILGORE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. C22-1196-JCC

ORDER

This matter comes before the Court on Petitioner’s motion for leave to appeal *in forma pauperis* (Dkt. No. 9). Having thoroughly considered the motion and the relevant record, the Court finds oral argument unnecessary and hereby DENIES the motion for the reasons explained herein.

Under the Federal Rules of Appellate Procedure, a party to a district court action who desires to appeal *in forma pauperis* must file a motion in the district court with an affidavit that: (1) shows in prescribed detail the party’s inability to pay or to give security for fees and costs; (2) claims an entitlement to redress; and (3) states the issues that the party intends to present on appeal. Fed. R. App. P. 24(a). In addition, “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). “[A]n appeal is not taken in good faith . . . if . . . no issue is presented which is not plainly frivolous.” *Tweedy v. United States*, 276 F.2d 649, 651 (9th Cir. 1960); *see also Neitzke v. Williams*, 490

1 U.S. 319, 325 (1989) (holding that an appeal is frivolous where it lacks an arguable basis in law).

2 Petitioner filed a habeas petition pursuant to 28 U.S.C. § 2255 alleging three grounds for  
3 relief. (Dkt. No. 5.) All of which the Court dismissed with prejudice upon a finding that they  
4 were patently frivolous. (Dkt. Nos. 6,7.) Neither Petitioner's notice of appeal nor his instant  
5 application for leave to appeal *in forma pauperis* identify alleged errors by the Court or address  
6 the deficiencies in his petition; rather, they repeat the same grounds for relief as in his original  
7 habeas petition. (*Compare* Dkt. Nos. 5, 6 with Dkt. No. 8-1, 9.) Thus, Petitioner's appeal is  
8 frivolous because it lacks an arguable basis in law. *See Neitzke*, 490 U.S. at 325.

9 Therefore, the Court CERTIFIES that Petitioner's appeal is not taken in good faith and  
10 DENIES Petitioner's motion to proceed *in forma pauperis* on appeal. The Court DIRECTS the  
11 Clerk to send this order to the Ninth Circuit. The Court further DIRECTS the Clerk to send a  
12 copy of this order to Petitioner.

13 DATED this 14th day of November 2022.

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A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour  
UNITED STATES DISTRICT JUDGE